



U.S. Department of Justice

United States Attorney
Southern District of New York

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September 25, 2012

BY EMAIL: NathanNYSDChambers@nysd.uscourts.gov

The Honorable Alison J. Nathan
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Lindner v. Court Security Officer (CSO) Newell, et al.*
11 Civ. 8365 (AJN)

Dear Judge Nathan:

I write respectfully in response to the affidavit that Plaintiff submitted to the Court yesterday, September 24, 2012. This affidavit is the latest in a series of documents that Plaintiff has submitted in response to the Federal Defendants' motion to dismiss — after the September 10, 2012, deadline for Plaintiff's opposition papers. As with Plaintiff's other submissions, nothing in this affidavit undermines any of the Federal Defendants' arguments, including that Plaintiff failed to exhaust his administrative remedies under the FTCA prior to bringing this lawsuit. Whether the USMS's Office of Inspection received Plaintiff's September 22, 2010, letter — or any of the other letters that Plaintiff describes in the affidavit — is irrelevant; as the Federal Defendants explained in their reply brief, those letters lacked information that must be included in a letter before it can qualify as an administrative tort claim sufficient to satisfy the FTCA's exhaustion requirement.¹

The Federal Defendants' motion to dismiss is now fully briefed. Accordingly, absent a request from the Court, the Federal Defendants do not plan to respond to any further unauthorized filings by Plaintiff.

¹ I have confirmed that: (1) the USMS's Office of Inspection received two complaint letters from Plaintiff; and as a result of those letters (2) the Office of Inspection opened investigations on September 30, 2010, and November 3, 2010. However, neither of Plaintiff's complaint letters was treated as an FTCA claim, which was entirely appropriate. Based on Plaintiff's own allegations, the letters lacked information sufficient to put the USMS on notice that Plaintiff was pursuing a tort claim against it, including "a claim for money damages in a sum certain." See 28 C.F.R. § 14.2(a).

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Respectfully submitted,

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